

Legal Protection Of Women Workers On The Night Shift (Comparison Of Indonesia And Malaysia)

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Abstract

Along with the development of the global economy and the current needs of the industry, many companies have implemented work systems for a period of approximately 24 hours. The working time is divided into three work shifts. Among the three shifts, the night shift (23.00 - 05.00) is the most risky for female workers, especially in meeting their economic needs, due to working hours that do not match the body's rhythm. However, many women choose to work night shifts because of the flexibility of the time offered. To address the challenges faced by female night shift workers, strong support from families and companies is needed. This study aims to compare legal protection for female workers on night shifts in Indonesia and Malaysia. The method used is a comparative analysis of labor regulations in both countries, including Law No. 13 of 2003 on Manpower in Indonesia and the Employment Act 1955 in Malaysia. The results show that while the two countries have similar regulations in terms of not requiring specific permits for female workers over 18 years of age and employers' obligations to provide health and safety facilities, Malaysia is stricter in oversight and more specific in discussing the limits on working hours and facilities that must be provided. In Indonesia, the implementation of regulations is still ineffective, so it is necessary to increase supervision and legal awareness. This study emphasizes the importance of effective legal protection to improve the welfare of women workers who work night shifts

Keywords: *protection, female workers, night shifts.*

INTRODUCTION

Global economic development and increasing industrial needs have encouraged many companies to implement Shift Work. Shift work offers a variety of work time arrangements to meet different operational needs. Shift work can also be interpreted as a work system that continues for 24 hours with rotating shifts (Morshed, 2002). For a company that implements a work system for 24 hours a day continuously, it generally divides its working hours into 3 shifts or work waves, namely:

1. *ShiftFirst / Morning Shift:* from 06.00 to 14.00
2. *ShiftSecond / Afternoon Shift:* from 14.00 to 22.00
3. *ShiftThird / Night Shift:* from 22.00 to 05.00.

This work system does not only apply to male workers but also female workers. Changes in public perception of the role of women in the world of work have opened up wider opportunities for women to contribute in various sectors, including those previously dominated by men. Although the night shift work system provides flexibility for companies, there are significant challenges and risks, especially for female workers. Health, safety, and well-being risks are major concerns because working at night can affect the biological rhythm and life balance of workers.

Women who work night shifts often face unique challenges in balancing work and family demands. Unconventional work schedules can disrupt sleep patterns, trigger chronic fatigue, and inhibit social interactions. Family support, such as help with household chores, and flexible company policies, such as flexible working hours and childcare facilities, are essential to help women overcome these challenges and improve their well-being. Despite these challenges, many women choose to work night shifts because of the flexibility they offer. The push to meet complex economic needs, changing family structures, and support for pro-gender equality government policies have created a conducive environment for

women to pursue flexible careers, including night shifts. The flexibility of night shift work is attractive to women who want to balance work and family responsibilities.

In several countries, including Indonesia and Malaysia, the government has enacted specific regulations aimed at protecting the rights of workers, especially women, who work the night shift. The labor laws in both countries contain provisions that regulate the terms and conditions for women who work during these hours, including protection of their health, safety, and welfare. However, the implementation and effectiveness of these regulations are still issues that need further research.

In this context, this study aims to conduct a comparison between Indonesia and Malaysia regarding the legal protection provided to female workers who work on night shifts. By focusing on the perspective of labor laws in both countries, this study is expected to provide in-depth insights into the strengths and weaknesses of existing regulations, as well as recommendations for improving policies that are more effective in protecting female workers. By comparing practices in Indonesia and Malaysia, this study not only identifies similarities and differences in regulations, but also reveals gaps that need to be closed and best practices that can be adopted. The results of this study are expected to inspire further research and encourage the development of more innovative policies in the field of female worker protection.

RESULTS AND DISCUSSION

1. Legal Protection for Female Workers on Night Shifts in Indonesia

In Indonesia, legal protection for female workers who work night shifts is regulated in several laws and regulations, especially Law Number 13 of 2003 concerning Manpower, and Decree of the Minister of Manpower and Transmigration Number 224 of 2003. Article 76 of Law Number 13 of 2003 concerning Manpower has provided special protection for female workers/laborers, especially related to working hours. The following is the content of Article 76 of Law No. 13/2003:

- (1) *“Female workers/laborers under the age of 18 (eighteen) years are prohibited from being employed between 23.00 and 07.00.*
- (2) *Employers are prohibited from employing pregnant female workers/laborers who, according to a doctor's statement, are dangerous to their health and safety of its contents or himself if he works between 23.00 and 07.00.*
- (3) *Employers who employ female workers/laborers between 23.00 and 07.00 are required to: a. Maintain morality and security while in the workplace, b. Maintain morality and security while in the workplace.*
- (4) *Employers are required to provide shuttle transportation for female workers/laborers who go to and from work between 23.00 and 05.00.”*

In addition, Article 2 of the Decree of the Minister of Manpower and Transmigration Number 224 of 2003 also regulates the obligations of companies that employ female workers on night shifts. The following is the content of Article 2 of the Decree of the Minister of Manpower 224/2003:

- (1) *“Employers who employ female workers/laborers between 23.00 and 07.00 are obliged to:*
 - a. *provide nutritious food and drinks;*
 - b. *maintain decency and safety while at work.*
- (2) *Employers are required to provide shuttle transportation for female workers/laborers who go to and from work between 23.00 and 05.00.”*

The criteria for nutritious food and drinks that must be provided by employers to female night shift workers are outlined in Article 3 and Article 4 of the Minister of Manpower Decree 224/2003 which reads:

Article 3

- (1) *“Nutritious food and drinks must contain at least 1,400 calories and be provided during breaks between working hours.*
- (2) *Food and drinks cannot be replaced with money.”*

Article 4

- (1) *“Provision of food and beverages, equipment, and dining rooms must be adequate and meet hygiene and sanitation requirements.*
- (2) *The presentation of food and drink menus given to workers/laborers must be varied.*

Likewise, regarding providing security and maintaining workers' morality while in the workplace, this is explained in Article 5 of the Minister of Manpower Decree 224/2003, namely:

"Employers are obliged to maintain the safety and morality of female workers/laborers as referred to in Article 2 paragraph (1) letter b by:

- a. provide security officers at the workplace;*
- b. provide decent bathrooms/toilets with adequate lighting and separate for male and female workers/laborers."*

The provisions for providing shuttle services for female workers on night shifts are outlined in Article 6 and Article 7 of the Minister of Manpower Decree 224/2003 as follows:

Article 6

- (1) "Entrepreneurs are required to provide pick-up and drop-off services starting from the pick-up location to workplace and vice versa.*
- (2) Pickup is done from the pick-up location to work And otherwise between 23.00 and 05.00."*

Article 7

- (1) "Employers must set pick-up and drop-off locations that are easily accessible and safe for female workers/laborers.*
- (2) The shuttle vehicle must be in good condition and must be registered with the company."*

Law Number 13 of 2003 Article 76 provides a general framework for regulating night shift work for female workers. However, for implementation in the field, the government issued more specific technical provisions through KEPMENAKERTRANS No: KEP/224/2003. This regulation regulates in detail the obligations of employers who employ female workers on night shifts, thus providing clearer guidelines for companies in carrying out their operations.

2. Legal Protection for Female Workers on Night Shifts in Malaysia

The Employment Act 1955 in Malaysia has become the legal basis governing industrial relations in the country. Based on the Employment Act 1955 which has been amended to become the Employment (Amendment) Act 2022 (Act A1651) and has been in effect since 1 January 2023, One of the important aspects regulated in this law is regarding working hours, especially for female workers. Article 34 of the Employment Act 1955 Malaysia, Part VIII, before being abolished stated that:

- (1) "Except in accordance with regulations made under this Act or any exemption granted under the proviso to this subsection no employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having a period of eleven consecutive hours free from such work:
Provided that the Director General may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.*
- (2) Any person-*
 - (a) who is affected by any decision made or condition imposed under the proviso to subsection (1); and*
 - (b) who is dissatisfied with such decision or condition,**may within thirty days of such decision or condition being communicated to him appeal in writing therefrom to the Minister.*
- (3) In deciding any appeal made to him under subsection (2), the Minister may make such decision or order thereon, including the alteration or removal of any condition imposed or the imposition of any further condition, as appears just and such decision or order shall be final."*

As for Article 36 of the Employment Act 1955 Malaysia, Part VIII, before it was repealed, it stated that

"Notwithstanding the provisions of this Part the Minister may by order prohibit or permit the employment of female employees in such circumstances or under such conditions as may be described in such order."

Prior to the amendment in 2022, the Employment Act 1955 [Act 265] in Part VIII of the Act which discusses "Employment of Women", especially in Article 34(1) expressly prohibits employers from employing women on night shifts. This restriction aims to protect the health and welfare of female workers, given the high physical and mental demands of working at night. However, along with the development of the times and changes in socio-economic dynamics, views on the role of women in the world of work have also undergone a transformation. This reality has encouraged the Malaysian government to review the existing provisions.

In response to these changes, the Malaysian government then passed the Employment (Amendment) Act 2022, namely “*Employment Act (Amendment)*” 2022 [Act A1651]. One of the significant changes brought about by this amendment is the complete repeal of Part VIII especially Article 34(1) which previously prohibited women from working on night shifts, namely between 10 pm and 5 am. However, Article 34(1) also allows women to work on night shifts (7 pm to 7 am) on the condition that the employer must first obtain a work permit or approval from the Director General of Labor (DGIR). If the employer does not have this permit, then they will be subject to warnings, orders, and legal action in the form of penalties from the Department of Labor. Therefore, the work permit from the DGIR also serves as a tool to ensure that employers have provided the necessary support for female workers. In addition, based on Article 35 which states “No female employee shall be employed in any underground working.”, it is stated that women are also not allowed to work underground.

Thus, women are now allowed to work night shifts in the industrial or agricultural sectors. According to Article 60C of “*Employment Act (Amendment)*” 2022 [Act A1651], shift workers are allowed to work more than 8 hours a day or more than 45 hours a week. However, the average working hours in a certain period, or in an approved period of more than 3 weeks, must not exceed 45 hours per week. In other words, shift workers have the same working hours as other workers in the context of normal working hours, namely 8 hours a day and no more than 45 hours a week. Exceptions only apply if the employer obtains permission from the Director General of Manpower to ask workers to work more than that time.

However, Article 60A(1) “*Employment Act (Amendment)*” 2022 [Act A1651] requires employers to provide workers with a minimum of 11 hours of rest before starting the next shift. This provision aims to protect the health and safety of workers by ensuring that they have sufficient time to rest and recuperate. Adequate rest breaks are not only important to increase work productivity, but also to prevent work accidents that can endanger workers and the company. In addition, this provision is also in line with the principles of fair and humane employment, where workers have the right to decent and healthy working conditions. This provision aims to ensure that female workers still get sufficient time to rest and recuperate, so that they can carry out their duties optimally. This change marks a milestone in the fight for gender equality in the workplace in Malaysia, providing more flexibility and opportunities for women to actively participate in various sectors of the economy.

In addition, the amendment also strengthens protection for female workers as a whole, not only in relation to working hours. The extended maternity leave and newly introduced paid paternity leave are a form of the government's commitment to supporting work-life balance for female and male workers.

3. Comparison of Similarities and Differences in Regulation

Table 1. Equations

| Equality | |
|---|----------|
| Indonesia | Malaysia |
| Both countries prohibit pregnant women from working night shifts. | |
| Both countries are required to provide several facilities to ensure the safety, security and proper health of female workers working on night shifts (such as nutritious food and drinks, shuttle transportation etc.). | |
| Both countries have regulations prohibiting underage female workers from working night shifts. | |

Both Malaysia and Indonesia have established strong regulations to protect the health of pregnant women by prohibiting them from working night shifts. The legal basis, namely Article 34 of the Employment Act 1955 in Malaysia and Article 76 paragraph (2) of the Manpower Act No. 13 of 2003 in Indonesia, gives medical personnel the authority to determine whether night work is harmful to pregnant women and their fetuses. This prohibition is based on strong medical considerations, such as the risk of sleep disturbances and stress. Although both countries have similar regulations, there are differences in the flexibility of their implementation. Malaysia is stricter by requiring written approval from a doctor, while Indonesia provides more room for negotiation. However, both demonstrate the same commitment to protecting the health of

pregnant women. The successful implementation of these regulations requires cooperation between the government, employers, workers, and medical personnel, as well as regular evaluation of the regulations.

Both countries have committed to providing adequate health and safety facilities for female night shift workers, particularly through the Guidelines on Reproductive Health Policy & Programmes at the Workplace in Malaysia and the Regulation of the Minister of Manpower and Transmigration No. PER.03/MEN/1989 in Indonesia. Both regulations aim to create a healthy and safe working environment. Despite having similar objectives, the level of detail and scope of the regulations differ. The regulation in Indonesia is more specific, while Malaysia is more flexible. Challenges in implementation include lack of awareness by employers, difficulty in supervision, and limited resources. To overcome this, cooperation between various parties, regular evaluation, and adjustments to existing developments are needed.

Both Malaysia and Indonesia have demonstrated a strong commitment to protecting the rights of female workers, especially those who are still minors, by strictly prohibiting them from working night shifts. In Malaysia, the Employment Act 1955 Article 34 explicitly prohibits workers under 18 years of age from working night shifts under any circumstances. This shows that the Malaysian government has a very firm view on the protection of child workers. Meanwhile, in Indonesia, the Employment Act No. 13 of 2003 Article 76 paragraph (1) also prohibits female workers under 18 years of age from working between 11 pm and 7 am. This prohibition is based on the understanding that child workers, especially women, are very vulnerable to exploitation and higher health risks if they work at night. Night shift work can disrupt children's sleep patterns, growth, and physical and mental development. In addition, child workers are also at risk of physical, sexual, and psychological violence. With these clear and firm regulations, it is hoped that violations of the rights of child workers can be prevented and a safer and healthier working environment can be created for them.

Table 2. Differences

| Difference | |
|--|--|
| Indonesia | Malaysia |
| Even though in Indonesia there are special regulations regarding additional facilities, entrepreneurs still do not fully comply with the provisions. | Malaysia is stricter in terms of monitoring the implementation of night shifts and is more specific in discussing the limits of working hours and the facilities provided. |
| No special permit is required for female workers aged 18 and over to work the night shift, provided that safety and health facilities are met. | Women are allowed to work night shifts in the industrial or agricultural sectors, but employers are required to provide workers with a minimum of 11 hours of rest before starting the next shift, and 8 hours a day and no more than 45 hours a week. |

Both countries, Indonesia and Malaysia, have regulations aimed at protecting female workers, especially those working night shifts. However, implementation in the field shows significant differences. Indonesia, despite having fairly comprehensive regulations, still faces obstacles in supervision and law enforcement. Many companies do not fully comply with regulations, especially regarding work facilities and safety. In contrast, Malaysia has shown a stronger commitment to protecting female workers through clear regulations and strict supervision. This is reflected in "Employment Act (Amendment)" 2022 [Act A1651] which provides comprehensive protection, not only for underage female workers, but also for pregnant women. This difference highlights the importance of having not only good regulations, but also effective monitoring and enforcement mechanisms to ensure the protection of female workers' rights.

Both Malaysia and Indonesia have provided flexibility for female workers aged 18 and above to work night shifts, provided they meet certain requirements. Both countries do not require special permits for female workers to work night shifts, but require companies to provide adequate safety and health facilities. In addition, both Malaysia and Indonesia have set limits on working hours and adequate rest breaks to ensure the health and safety of workers. In Malaysia, "Employment Act (Amendment)" 2022 [Act A1651] stipulates that workers must be given a minimum of 11 hours of rest before starting the next shift, and limits working hours to 8 hours a day and 45 hours a week. Similar provisions are also stated in the

Manpower Law No. 13 of 2003 in Indonesia. Although both countries have similar regulations, differences in implementation and supervision in the field may still occur. Factors such as company culture, worker awareness, and the effectiveness of government supervision can affect the implementation of these regulations in the field. Therefore, it is important for both countries to continue to evaluate and improve existing regulations, as well as strengthen supervision to ensure that the rights of female workers are protected.

CLOSING

Both Indonesia and Malaysia have taken significant steps in regulating the protection of female workers who work the night shift. In Indonesia, comprehensive regulations are in place, as stipulated in Article 76 of Law No. 13 of 2003 concerning Manpower and the Regulation of the Minister of Manpower No. 224/MEN/2003. These regulations include a prohibition on underage female workers from working the night shift, as well as an obligation for companies to provide safety and health facilities, including round-trip transportation. However, the biggest challenge lies in implementation in the field, where many companies still do not fully comply with these regulations. Ineffective supervision and lack of awareness among employers are often obstacles to ensuring optimal protection for female workers.

Meanwhile, Malaysia has just made major amendments to its employment laws, specifically through the Employment Act 1955. This amendment opens up new opportunities for women but also presents new challenges in terms of supervision and protection. In addition, companies are required to ensure a safe working environment and provide transportation facilities. While this regulation provides better protection, new challenges arise in terms of supervision and protection. Strict supervision and ongoing monitoring are needed to ensure that companies are truly complying with these rules and providing real benefits to female workers.

The comparison between the two countries shows that despite differences in approach, the common challenge is ensuring that existing regulations are implemented and provide real benefits to women workers. To achieve this goal, a joint effort is needed from governments, employers, trade unions and civil society to raise awareness, strengthen supervision and conduct regular evaluations. Strict implementation of regulations and effective monitoring will ensure optimal protection for women workers working the night shift. In addition, education and training for employers and workers on their rights and obligations is also essential to creating a safe and healthy working environment for all parties.

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